

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

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SPECIAL CIVIL APPLICATION No 5522 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?  
1 to 5 No
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INDARVADAN J MEHTA

Versus

CONTROLLING AUTHORITY OF PAYMENT OF GRATUITY ACT

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Appearance:

MR KR KOSHTI for Petitioners

Ms. V.K. Parekh, learned A.G.P.

for Respondent Nos. 1 to 3

MR DEEPAK V PATEL for Respondent No. 4

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 08/09/97

ORAL JUDGEMENT

The petitioners have filed this petition for the payment of the remaining amount of gratuity in terms of the order dated 9.8.96 passed by the Controlling Authority under the Payment of Gratuity Act. The Controlling Authority under the Payment of Gratuity Act had directed the payment of a sum of Rs.39,745/- plus

interest at the rate of 10% per annum from 1.8.94 with regard to petitioner No.1 and a sum of Rs.26,500/- plus interest at the rate of 10% per annum from 1.8.94 with regard to petitioner No.2. Mr. Patel has submitted that a sum of Rs.34,565/- and a sum of Rs.24,686/- has already been paid to the petitioners respectively on 15.2.97 and only remaining amounts plus the interest remain to be paid. It is not in dispute that the Controlling Authority's order dated 9.8.96 has already attained finality and, therefore, the amounts had to be paid to the petitioners in terms of the order passed by the Controlling Authority. Mr. Patel appearing on behalf of respondent No.4 has submitted that Abad Dairy is facing a great financial crisis and large number of such claims are pending and that Abad Dairy has already been declared a sick industry and this fact had been duly brought to the notice of the Controlling Authority and he has also submitted that the Controlling Authority has refused to issue Recovery Certificates on the ground that Abad Dairy has been declared as a Sick Unit. This order, refusing to issue of the Recovery Certificates, has also been challenged in this petition. Even if Abad Dairy has been declared as a Sick Unit the amount of gratuity cannot be withheld, which is due to the petitioners on the basis of the voluntary retirement scheme, which had been introduced by Abad Dairy itself. Besides this, it has been pointed out by Mr. Koshti that the same authority has issued Recovery Certificate in the case of N.N. Trivedi, who is the petitioner in another Special Civil Application No.5519 of 1997. One fails to understand how the same authority in the same facts and circumstances and the same grounds being available has issued Recovery Certificate in the case of N.N. Trivedi and has refused to issue Recovery Certificates in the case of these two petitioners, namely, Indravadan J. Mehta and Jagdishchandra K. Patwari. This order dated 14.12.96, therefore, cannot be sustained in the eye of law and the same deserves to be quashed and set aside. Accordingly this order dated 14.12.96 is quashed and set aside.

In the facts and circumstances of this case, the amounts, less the amount already paid to each of the petitioner, have to be paid to the petitioners alongwith the due amount of interest at the rate of 10% per annum from 1.8.94 in terms of the order passed by the Controlling Authority. If the respondents are facing a financial crisis, all that can be done is to grant some time for making payment of the due amount plus interest. In the facts and circumstances of this case, it is directed that the remaining amount due to each of the two petitioners plus the interest in terms of the order

passed by the Controlling Authority under the Payment of Gratuity Act shall be paid to the petitioners at the earliest possible opportunity but in no case later than 31.12.97. This Special Civil Application is accordingly allowed and the Rule is made absolute in the terms, as aforesaid. No order as to costs.